So, I very much hold to the notion that markets should be judged on their own individual facts, and that good antitrust policy, which the FCC tries to follow, should be able to be implemented on a market-by-market basis.

Mr. STEARNS. Well, in this bill that we have, we do specify that you have the authority under those circumstances to see if competition is being fulfilled. Do you feel under this bill, this 1556, that you will have sufficient language so that you could protect the local markets from being dominated by one corporation?

Mr. HUNDT. I do have some suggestions that I'd like to give you, if I could be so bold, in writing--

Mr. STEARNS. That would be excellent.

Mr. HUNDT.--that would permit me to say, yes, to your question.

Mr. STEARNS. Well, Mr. Chairman, I think--and I also said that to my good friend from Massachusetts, Mr. Markey, that we have got sort of an endorsement by Mr. Hundt for our amendment dealing with broadcast ownership, sort of an indirect. We have played off what he has requested. He seems to be pretty happy, as well as dealing with mass communications. So, with his input, perhaps we can get a bipartisan bill here.

Thank you, Mr. Chairman. I yield back the balance of my time.

(17)

Without wishing to seem to be too nit-picking, I would offer one further refinement. proposed subsection 336(f)(1) suggests a rather precise definition of ATV. The ATV technology currently under consideration by the Commission is inherently extremely flexible. It would not be prudent to stifle creative applications of this flexibility by burdening it with the legal restrictions implied in this section. Subsection 336(f)(1) would require "enhanced" quality of audio and video resolution. While it might be expected that the market will naturally provide enhanced quality, I think we should let market preferences determine acceptable video quality. Thus, if they so choose, more program streams could be available to consumers. I would therefore propose that "Advanced Television Services" be defined as "... television services provided using digital or other advanced technology, as further defined in the opinion, report and order ..."

Chairman Hundt on
Broadcast Ownership (H.R. 1556), Letter to Chairman Fields, 5/12/95

I believe that ongoing changes in communications markets justify reexamination of the broadcast ownership rules both at the national and at the local level. And, I support the overall thrust of the legislation with regard to national multiple ownership limits. The provisions pertaining to local broadcast ownership, however, raise certain concerns because they unduly limit the Commission's authority to review and prohibit transactions that could adversely affect media competition and diversity.

Local mass media markets vary enormously in size and composition and exhibit wide differences in their levels of competition and voice diversity. I believe, therefore, that it is important for any legislation prescribing local broadcast ownership rules at a minimum to afford the Commission the discretion to refuse to license ownership combinations that it believes would disserve either of our goals of competition and voice diversity. Further, it would be desirable in those cases where the legislation relies on case-by-case determinations by the Commission, to include some guidance in the legislation as to the conditions that should inform our decisions. Applying these considerations to the specific provisions of the legislation, there are two areas in which changes consistent with these concerns would be appropriate.

First, subsection (a) of H.R. 1556 effectively eliminates the local radio ownership rules without regard to the extent of competition in particular local media markets. In small radio markets, this could result in substantial ownership concentration and loss of diversity. The legislation should consider defining a minimum level of diverse ownership in such markets (e.g., not fewer than five separate owners). In addition, the Commission should be given the authority to deny applications that would result in highly concentrated markets or harm diversity on a case-by-case basis.

Second, subsection (a) of the legislation would effectively preclude the FCC from reviewing mass media cross-ownership combinations under any circumstances, including combinations in markets with very few media outlets or competitors. For example, one entity could own a cable system, a broadcast television station, a local newspaper and a wireless

(18)

cable system irrespective of the number of competitors or media outlets in that market. Existing cross-service ownership restrictions may no longer be appropriate in the face of dramatic changes in technology and in the nature of media companies, but it is difficult to predict the precise impact these changes will have on our competition and diversity concerns under all conditions. Thus, the legislation should authorize the Commission to preclude combinations that would result in highly concentrated markets or harm diversity.

Education Proposal

Although most schools have telephone service, that service rarely extends beyond the principal's office. Eighty-eight percent of the nation's classrooms are without a phone line and, according to a recent Department of Education study, 97 percent are not connected to any computer network. In other words, we do not have even the most rudimentary infrastructure to connect the nation's classrooms to the information superhighway.

I propose a mechanism which would assist with networking the classrooms, not just the schools. The recent Department of Education survey found that while 35 percent of *schools* have an external Internet connection, only 3 percent of *classrooms* are connected. The internal connections are more costly, but only networking the classrooms can bring educational technology to bear on improving daily teaching and learning. Every classroom should have e-mail and access to the emerging information superhighway.

This mechanism must assist with installation costs. The *initial* cost of networking the classrooms is the greatest obstacle to bringing teachers and students into the Information Age. Giving schools preferential or incremental service rates will only help once the network is in place.

I believe we must identify a dedicated, broad-based source of revenue that bears a nexus to our purpose and does not unfairly burden a narrow set of ratepayers. One possibility is to tap funds raised through the Universal Service Fund, drawing from all telecommunications providers and, as noted below, available as assistance to all those providers in networking the classrooms. The total amount of assistance should be capped and the program should terminate after no more than 5 years.

No new bureaucracy would be created: this fund could be administered by a non-governmental entity such as that which collects and distributes the current Universal Service Fund. Funds could be passed *directly to states* according to the formula in Title I of the Education Act; the states could suballocate as they deem proper to localities or school authorities.

The mechanism should be technology-neutral. Schools should be free to choose among competing networking technologies and providers, i.e., satellite, cable television, wireless cable, and wireless telephone, in addition to local telephone connections.

FCC

Proposed amendments to H.R. 1556 5/12/95

Amend Section 336(a)(1) to read as follows:

Rejected + alternative language adopted

(1) prohibiting or limiting, either nationally or within any particular area, a person or entity from hold any form of ownership or other interest in two or more broadcasting stations or in a broadcasting station and any other medium of mass communications unless, in a particular area, the Commission finds that the proposed combination of media interests would result in a highly concentrated market or would significantly and adversely affect the diversity of viewpoints available in the market; or

Add a new section 336(a)(3), as follows:

Rejected - alternative language adopted

(3) permitting a person or entity to own, operate, or control additional radio broadcast stations in any market where there are five (5) or fewer separate and independent radio broadcast owners.

Revise Section 336(c)(1) to delete the following text:

", except that the Commission shall not change the attribution rules in effect on the date of enactment of this section".

Entire provision deleted

20

AMENDMENT TO H.R. 1555

OFFERED BY MR. STEARNS OF FLORIDA

(Broadcast Ownership)

(Page & line nos. refer to Committee Print of 5/20/95)

Page 137, after line 18, insert the following new section (and redesignate the succeeding sections and conform the table of contents accordingly):

SEC. 302. BROADCAST OWNERSHIP.

(a) AMENDMENT.—Title III of the Communications Act of 1934 is amended by inserting after section 335 (47 U.S.C. 335) the following new section:

"SEC. 336. BROADCAST OWNERSHIP.

"(a) LIMITATIONS ON COMMISSION RULEMAKING AUTHORITY.—Except as expressly permitted in this section, the Commission shall not prescribe or enforce any regulation—

"(1) prohibiting or limiting, either nationally or within any particular area, a person or entity from holding any form of ownership or other interest in two or more broadcasting stations or in a broadcasting station and any other medium of mass communication; or

(21)

"(2) prohibiting a person or entity from owning, operating, or controlling two or more networks of broadcasting stations or from owning, operating, or controlling a network of broadcasting stations and any other medium of mass communications.

"(b) TELEVISION OWNERSHIP LIMITATIONS.—

"(1) NATIONAL AUDIENCE REACH LIMITATIONS.—The Commission shall prohibit a person or entity from obtaining any license if such license would result in such person or entity directly or indirectly owning, operating, or controlling, or having a cognizable interest in, television stations which have an aggregate national audience reach exceeding—

"(A) 35 percent, for any determination made under this paragraph before one year after the date of enactment of this section; or

"(B) 50 percent, for any determination made under this paragraph on or after one year after such date of enactment.

halbeen ✓ 2 years

Within 3 years after such date of enactment, the Commission shall conduct a study on the operation of this paragraph and submit a report to the Congress on the development of competition in the television marketplace and the need for any revisions to or elimination of this paragraph.

(22)

"(2) MULTIPLE LICENSES IN A MARKET.—

"(A) IN GENERAL.—The Commission shall prohibit a person or entity from obtaining any license if such license would result in such person or entity directly or indirectly owning, operating, or controlling, or having a cognizable interest in, two or more television stations within the same television market.

"(B) EXCEPTION FOR MULTIPLE UHF STATIONS AND FOR UHF-VHF COMBINATIONS.—Notwithstanding subparagraph (A), the Commission shall not prohibit a person or entity from directly or indirectly owning, operating, or controlling, or having a cognizable interest in, two television stations within the same television market if at least one of such stations is a UHF television, unless the Commission determines that permitting such ownership, operation, or control will harm competition or will harm the preservation of a diversity of media voices in the local television market.

"(C) EXCEPTION FOR VHF-VHF COMBINATIONS.—Notwithstanding subparagraph (A), the Commission may permit a person or entity to directly or indirectly own, operate, or control,

or have a cognizable interest in, two VHF television stations within the same television market, if the Commission determines that permitting such ownership, operation, or control will not harm competition and will not harm the preservation of a diversity of media voices in the local television market.

"(c) LOCAL CROSS-MEDIA OWNERSHIP LIMITS.—In a proceeding to grant, renew, or authorize the assignment of any station license under this title, the Commission may deny the application if the Commission determines that the combination of such station and more than one other nonbroadcast media of mass communication would result in an undue concentration of media voices in the respective local market. In considering any such combination, the Commission shall not grant the application if all the media of mass communication in such local market would be owned, operated, or controlled by two or fewer persons or entities. This subsection shall not constitute authority for the Commission to prescribe regulations containing local cross-media ownership limitations. The Commission may not, under the authority of this subsection, require any person or entity to divest itself of any portion of any combination of stations and other media of mass communications that such person or entity owns, operates, or controls

New language

on the date of enactment of this section unless such person or entity acquires another station or other media of mass communications after such date in such local market.

"(d) TRANSITION PROVISIONS.—Any provision of any regulation prescribed before the date of enactment of this section that is inconsistent with the requirements of this section shall cease to be effective on such date of enactment. The Commission shall complete all actions (including any reconsideration) necessary to amend its regulations to conform to the requirements of this section not later than 6 months after such date of enactment. Nothing in this section shall be construed to prohibit the continuation or renewal of any television local marketing agreement that is in effect on such date of enactment and that is in compliance with Commission regulations on such date.".

= broadcast cable cross ownership ban

(b) CONFORMING AMENDMENT.—Section 613(a) of the Communications Act of 1934 (47 U.S.C. 533(a)) is repealed.

ADMINISTRATION COMMENTS ON H.R. 1555: THE COMMUNICATIONS ACT OF 1995, AND RELATED LEGISLATION BEFORE THE HOUSE COMMERCE COMMITTEE
MAY 15, 1995

I. Introduction

The Administration believes that the key test for any telecommunications reform measure is whether it helps the American people. Legislation should provide benefits to consumers, spur economic growth and innovation, promote private sector investment in an advanced telecommunications infrastructure, and create jobs. Unleashing monopolies before real competition exists, however, could cause higher prices for consumers and hinder competition. During the transition, safeguards are needed to bring real competition and all of its benefits.

H.R. 1555 proposes reforms in key areas that the Administration agrees need to be addressed. These areas include promoting universal service generally as well as access to networks by individuals with disabilities; prompt lifting of the statutory ban on telephone companies providing video programming directly to subscribers (the telco-cable crossownership ban); requiring that telephone companies in most cases establish a video platform to provide video programming; authorizing the Federal Communications Commission (FCC) to prohibit discrimination on the basis of ethnicity, race, or income with respect to video platform service areas; and preempting state barriers to competition in local telephone service.

The Administration has strong reservations, however, about other provisions in H.R. 1555 that fail to ensure the development of real competition or to protect consumers. The Administration urges the House to amend the legislation to ensure a truly competitive telecommunications marketplace by addressing our major concerns as discussed below.

II. Cable Rate Regulation

The Administration is concerned about the provisions of H.R. 1555 that severely limit government review of "cable programming services" rates and virtually eliminate rate regulation for small cable systems. While some relief in these areas may be warranted, the House bill as currently drafted would prematurely deregulate monopoly cable systems, to the detriment of millions of cable subscribers.

Deregulation of Cable Programming Services: H.R. 1555 creates a new definition of "effective competition" as it pertains to cable programming services (commonly known as expanded basic services). The bill would terminate government regulation of those services (and associated equipment) when one of the following three conditions is met: 1) the FCC authorizes a common carrier to provide video dialtone (VDT) service in a cable system's franchise area; 2) the FCC or a franchise authority authorizes a carrier to provide video programming in the franchise area; or 3) the FCC has prescribed regulations relating to video platforms.

Rate Regulation: H.R. 1555 prohibits the FCC or the States from adopting rate-of-return regulation for any carrier that has complied with the access and interconnection requirements in the bill. As noted above, however, many of the terms in the bill are vague and may not ensure effective competition, particularly in the absence of a DOJ role. The FCC and the States, therefore, should continue to have the flexibility to adopt rate regulation that best serves consumers in markets that are not yet fully competitive. The provisions in the bill that would deprive the FCC and the States of this flexibility should be removed. Mandating that certain rate regulation schemes cannot be applied irrespective of the extent of competition in the marketplace could lead to increased telephone rates for consumers.

VI. Foreign Ownership

H.R. 514, which is also pending before the Committee, would repeal current limitations in Section 310(b) of the Communications Act on foreign ownership in broadcast, common carrier, and certain aeronautical radio station licenses. While the Administration agrees with the Subcommittee's interest in reexamining these foreign ownership limitations, we disagree with the unilateral repeal of Section 310(b) as proposed by H.R. 514. The Administration supports amendments to Section 310(b) for common carrier licenses that would: 1) require comparable market opportunities in other countries; 2) involve Executive Branch agencies in such market access determinations; and 3) retain limitations on broadcast licenses.

Comparable Market Access: The Administration feels very strongly that current limitations on foreign ownership in the United States should only be lifted for countries that have also opened their telecommunications markets to U.S. companies. This approach recognizes that while many countries are in the process of further liberalization, such progress will be varied among countries and will evolve over time.

Executive Branch Involvement: In addition, a determination of whether a country has sufficiently opened its telecommunications markets to U.S. companies should be made by the FCC, based upon deference to the appropriate Executive Branch agencies who have broad statutory authority and expertise in matters relating to U.S. national security, foreign relations, the interpretation of international agreements, and trade (as well as direct investment as it relates to international trade policy). The determination also should take into account the Executive Branch's views and decisions with respect to antitrust and telecommunications and information policies.

The role of the Executive Branch is critical because, among other things, the Administration is engaged in ongoing bilateral and multilateral negotiations and efforts to develop the Global Information Infrastructure (GII). The Administration is heavily involved, for example, in the Negotiating Group on Basic Telecommunications (NGBT), which was established to achieve progressive liberalization of trade in basic telecommunications facilities and services within the framework of the General Agreement on Trade in Services. The deadline for the NGBT negotiations is April 30, 1996.

Retain Limitations on Broadcast Licenses: Finally, the Administration would not move to lift the current 25 percent limitation on foreign ownership with respect to broadcasting at this time. Broadcast licenses are fundamentally different from common carrier radio licenses. Broadcasters are the principal source of news and information for most Americans and have broad discretion in determining the content of their transmissions. They also have public interest obligations to serve local communities. Finally, U.S. broadcasters are required to participate in the Emergency Alert System, which alerts the public to emergency information. Through the ubiquitous national coverage of their signals, citizens are assured of receiving emergency news and information relating to U.S. national security, natural disasters, and other critical matters.

Holders of radio-based common carrier licenses, in contrast, typically control only the underlying facilities rather than the content of messages transmitted over those facilities. It is therefore reasonable to adopt different ownership rules for these distinct categories of licenses. In addition, the current 25 percent foreign ownership limitation under U.S. law for broadcast licenses is either more liberal or comparable to foreign ownership limitations in most other countries. Moreover, while the U.S. has limitations on foreign investment in broadcast facilities, it does not impose quantitative restrictions on creative content, as many other countries do, including several of our key trading partners.

VII. Broadcasting

The Administration is concerned that H.R. 1555 and H.R. 1556, legislation also pending before the Committee, would permit greater concentration in the broadcast industry and less rigorous and timely oversight of broadcast licensees by the FCC. The provisions relaxing limits on local and national ownership concentration and limiting license review would impede competition and diversity of voices by enabling existing owners to concentrate control over expanding broadcast capacity. The Administration supports the ongoing review of ownership regulations being conducted by the FCC that would allow for a complete review of competition in these markets before relaxing ownership limits. Any review of local and national ownership structures should continue to ensure that the principles upon which the Communications Act is based -- universal service, diversity, and localism -- remain steadfast.

Media Concentration: H.R. 1556 would allow for a dramatic increase in concentration of ownership of the mass media. This bill would eliminate national ownership, local ownership, and cross-ownership limitations on the mass media. The result would be a dramatic consolidation of ownership in media outlets at the national level and a shift in local media markets from a situation with multiple owners and multiple voices to one in which a single entity could own a large share of the mass media outlets in a community. An increase in media concentration could also limit opportunities for minorities to become owners of mass media facilities, which would, in turn, undermine the important goal of encouraging diversity of viewpoints.

The Administration is particularly concerned with proposals that would reduce the number of independent voices in local markets. The repercussions to businesses operating in local markets dominated by a few media owners could be severe. Reduced competition for the advertising dollar could increase the prices local businesses pay for access to television and radio commercial airtime as well as space in print media. These smaller firms would find themselves at a competitive disadvantage to larger, national firms better positioned to pay these higher rates. Concentration of national power in the television marketplace would also affect the program production industry. Local broadcasters affiliated with networks now provide their communities with a mix of locally produced, syndicated, and network programming. By strengthening the networks and increasing their leverage with affiliates, the bill could lead to a decrease in locally-produced and independently-produced programming.

License Terms: The Administration is concerned that provisions in H.R. 1555 would extend the term of broadcast licenses while also limiting license review by the FCC. These provisions weaken the FCC's ability to enforce a broadcaster's obligation to provide service in the public interest. In particular, the provisions deprive the FCC of its traditional authority to consider applications from competing entities who argue that they will do a better job of serving the public. The importance of timely license review is particularly important as broadcasters begin to provide non-broadcast services or pay-television services using digital compression and flexibility on their new spectrum.

Broadcast Spectrum Flexibility: The Administration generally agrees with the concept of providing broadcasters greater spectrum flexibility on their new spectrum for advanced television, while ensuring that such flexibility is consistent with serving the public interest. The Administration concurs with the Committee that no legislation or regulation should be adopted that would result in a broadcast licensee retaining use of both 6 Mhz channels after the transition period. We also agree that fees should be charged for the provision of nonbroadcast services that would otherwise have been subject to competitive bidding under Section 309(j) of the Communications Act. Flexible use of the spectrum should not cause substantial expense or inconvenience to television viewers. Nor should additional nonbroadcast services be permitted to reduce the current level of broadcast services provided.

VIII. Universal Service and Public Access Issues

One of the main principles of the Administration's National Information Infrastructure initiative is to preserve and advance universal service to avoid creating a society of information "haves" and "have nots." For this reason, the Administration supports the goal of universal service, including access for classrooms, libraries, hospitals, and clinics to the National Information Infrastructure, including in rural areas.

Foreign Ownership

Calendar No. 45

104TH CONGRESS
1ST SESSION

S. 652

[Report No. 104–23]

To provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 30 (legislative day 3/27), 1995

Mr. PRESSLER, from the Committee on Commerce, Science, and Technology, reported the following original bill; which was read twice and placed on the calendar

---

A BILL

To provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

30

common carrier designated as an essential telecommunications carrier for interexchange services under this paragraph that refuses to provide interexchange service in accordance with this paragraph to an unserved community or portion thereof that requests such service within 180 days of such request shall forfeit to the United States a fine of $50,000 for each day that such carrier refuses to provide such service. The Commission or the State, as appropriate, may extend the 180-day period for providing interexchange service upon a showing by the common carrier of good faith efforts to comply within such period.

"(8) IMPLEMENTATION.—The Commission may, by regulation, establish guidelines by which States may implement the provisions of this section.".

(b) CONFORMING AMENDMENT.—The heading for section 214 is amended by inserting a semicolon and "essential telecommunications carriers" after "lines".

SEC. 105. FOREIGN INVESTMENT AND OWNERSHIP REFORM.

(a) IN GENERAL.—Section 310 (47 U.S.C. 310) is amended by adding at the end thereof the following new subsection:

"(f) TERMINATION OF FOREIGN OWNERSHIP RESTRICTIONS.—

(31)

"(1) RESTRICTION NOT TO APPLY WHERE RECIPROCITY FOUND.—Subsection (b) shall not apply to any common carrier license held, or for which application is made, after the date of enactment of the Telecommunications Act of 1995 with respect to any alien (or representative thereof), corporation, or foreign government (or representative thereof) if the Commission determines that the foreign country of which such alien is a citizen, in which such corporation is organized, or in which such foreign government is in control provides equivalent market opportunities for common carriers to citizens of the United States (or their representatives), corporations organized in the United States, and the United States Government (or its representative). The determination of whether market opportunities are equivalent shall be made on a market segment specific basis.

"(2) SNAPBACK FOR RECIPROCITY FAILURE.—If the Commission determines that any foreign country with respect to which it has made a determination under paragraph (1) ceases to meet the requirements for that determination, then—

"(A) subsection (b) shall apply with respect to such aliens, corporations, and government (or their representatives) on the date on

(12)

which the Commission publishes notice of its determination under this paragraph, and

"(B) any license held, or application filed, which could not be held or granted under subsection (b) shall be withdrawn, or denied, as the case may be, by the Commission under the provisions of subsection (b).".

(b) CONFORMING AMENDMENT.—Section 332(c)(6) (47 U.S.C. 332(c)(6)) is amended by adding at the end thereof the following:

"This paragraph does not apply to any foreign ownership interest or transfer of ownership to which section 310(b) does not apply because of section 310(f).".

SEC. 106. INFRASTRUCTURE SHARING.

(a) REGULATIONS REQUIRED.—The Commission shall prescribe, within one year after the date of enactment of this Act, regulations that require local exchange carriers that were subject to Part 69 of the Commission's rules on or before that date to make available to any qualifying carrier such public switched network infrastructure, technology, information, and telecommunications facilities and functions as may be requested by such qualifying carrier for the purpose of enabling such qualifying carrier to provide telecommunications services, or to provide access

F:\SAC\COMM\H1555CAR.002

H.L.C.

Bill no.: HR 1555
Amendment no.: #29
Date offered: 5/25/95
Disposition: Adopted Voice vote

AMENDMENT TO H.R. 1555

OFFERED BY MR. OXLEY

[Foreign Investment and Ownership]

(Page & line nos. refer to Committee Print of 5/20/95)

Page 137, beginning on line 19, strike section 302 and insert the following:

SEC. 302. FOREIGN INVESTMENT AND OWNERSHIP.

(a) STATION LICENSES.—Section 310(a) (47 U.S.C. 310(a)) is amended to read as follows:

"(a) GRANT TO OR HOLDING BY FOREIGN GOVERNMENT OR REPRESENTATIVE.—No station license required under title III of this Act shall be granted to or held by any foreign government or any representative thereof. This subsection shall not apply to licenses issued under such terms and conditions as the Commission may prescribe to mobile earth stations engaged in occasional or short-term transmissions via satellite of audio or television program material and auxilliary signals if such transmissions are not intended for direct reception by the general public in the United States.".

(b) TERMINATION OF FOREIGN OWNERSHIP RESTRICTIONS.—Section 310 (47 U.S.C. 310) is amended by adding at the end thereof the following new subsection:

(34)

"(f) TERMINATION OF FOREIGN OWNERSHIP RESTRICTIONS.—

"(1) RESTRICTION NOT TO APPLY.—Subsection (b) shall not apply to any common carrier license granted, or for which application is made, after the date of enactment of this subsection with respect to any alien (or representative thereof), corporation, or foreign government (or representative thereof) if—

"(A) the President determines that the foreign country of which such alien is a citizen, in which such corporation is organized, or in which the foreign government is in control is party to an international agreement which requires the United States to provide national or most-favored-nation treatment in the grant of common carrier licenses; or

"(B) the Commission determines that not applying subsection (b) would serve the public interest.

"(2) COMMISSION CONSIDERATIONS.—In making its determination, under paragraph (1)(B), the Commission may consider, among other public interest factors, whether effective competitive opportunities are available to United States nationals or corporations in the applicant's home market. In evalu-

JT

ating the public interest, the Commission shall exercise great deference to the President with respect to United States national security, law enforcement requirements, foreign policy, the interpretation of international agreements, and trade policy (as well as direct investment as it relates to international trade policy). Upon receipt of an application that requires a finding under this paragraph, the Commission shall cause notice thereof to be given to the President or any agencies designated by the President to receive such notification.

"(3) FURTHER COMMISSION REVIEW.—Except as otherwise provided in this paragraph, the Commission may determine that any foreign country with respect to which it has made a determination under paragraph (1) has ceased to meet the requirements for that determination. In making this determination, the Commission shall exercise great deference to the President with respect to United States national security, law enforcement requirements, foreign policy, the interpretation of international agreements, and trade policy (as well as direct investment as it relates to international trade policy). If a determination under this paragraph is made then—

(36)

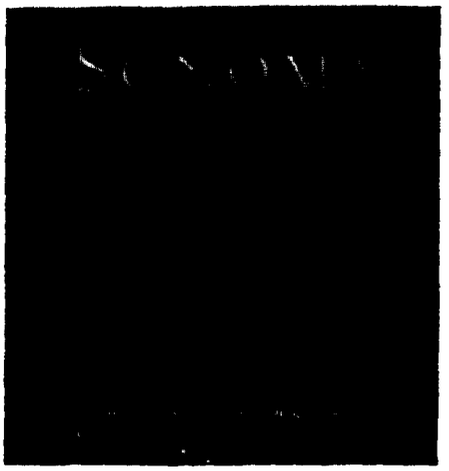
"(A) subsection (b) shall apply with respect to such aliens, corporation, and government (or their representatives) on the date that the Commission publishes notice of its determination under this paragraph; and

"(B) any license held, or application filed, which could not be held or granted under subsection (b) shall be reviewed by the Commission under the provisions of paragraphs (1)(B) and (2).

"(4) OBSERVANCE OF INTERNATIONAL OBLIGATIONS.—Paragraph (3) shall not apply to the extent the President determines that it is inconsistent with any international agreement to which the United States is a party.

"(5) NOTIFICATIONS TO CONGRESS.—The President and the Commission shall notify the appropriate committees of the Congress of any determinations made under paragraph (1), (2), or (3).".

77



ANNALS OF COMMUNICATIONS

New Yorker
June 5, 1995

PAY PER VIEWS

With legislation pending, what can a media C.E.O. do to get Congress on his side? PAC funds help, but the new Republicans want more than just money.

BY KEN AULETTA

LAST November at election time, Sumner Redstone, the chairman of Viacom, asked Frank J. Biondi, Jr., Viacom's chief executive officer, if the company's political-action committees had hedged their electoral bets by supporting Republican candidates as well as Democrats. Redstone had reason to be concerned. He was angling for a four- to six-hundred-million-dollar tax break, based on a 1978 law granting tax concessions to companies that sold broadcast or cable properties to minority owners (or to consortiums with minority partners in the lead), and last fall Viacom had agreed to sell its cable-television systems to a minority-fronted investor group. According to the Center for Responsive Politics, a nonprofit nonpartisan Washington research group, political-action committees controlled by Viacom and its Paramount subsidiary had contributed more than a hundred and seventy-three thousand dollars toward the 1994 congressional elections, but only eighteen per cent of that money had been directed to Republican candidates.

Soon after the Republicans took control of both Houses of Congress, Viacom began to fear that it and also the affirmative-action program that provided its tax break would be targets of the new majority. By early April, Congress had passed a retroactive law rescinding the program. The legislation stipulated that to be eligible for the tax concession a company must have filed its application with the Federal Communications Commission by January 17th. The Chicago Tribune Company, Rupert Murdoch, and Quincy Jones had filed before that date and received the tax benefit. Viacom, which had filed its application on January 20th, didn't. And it was not until last week that Viacom was able to announce a preliminary agreement to sell its cable systems. Biondi concedes that Viacom's lopsided giving to Democrats "may have" hurt the company in the House, but thinks that Presidential politics and a backlash against affirmative action were what really killed their tax break. Tony Coelho, the former chairman of the Democratic Congressional Campaign Committee, who is known in Washington as a master fund-raiser, disagrees; he understands the base motivations of many members of Congress. "They were go-

ing to lose no matter what," he says of Biondi and Viacom.

COMMUNICATIONS is the United States' fastest-growing industry, and is highly dependent on the government's favor. Its nine major components—broadcasting, cable, telephone, Hollywood and music-recording studios, publishing, computers, consumer electronics, wireless, and satellite—are well aware of the government's power. Last week, the House Commerce Committee passed a sweeping telecommunications-reform bill that will increase competition and, almost certainly, profits. It allows broadcasters to own television stations reaching up to fifty per cent of viewers (up from twenty-five per cent); deregulates cable rates; permits telephone companies to compete with cable companies in some markets; and allows local telephone companies to provide long-distance service and long-distance companies to provide local service. The final legislation may not include all of these changes, since it will have to be approved by the full House and by the Senate; that bill is expected to be sent to the President this year.

Communications companies have invested millions of dollars to affect the outcome. Since the mid-seventies, they, like an increasing number of other companies and most trade and labor organizations, have formed political-action committees, or PACs, which permit individuals within an organization to join a pool, which can donate up to five thousand dollars a candidate, compared with the thousand dollars permitted an individual acting alone.

On May 23rd, the Center for Responsive Politics issued a lengthy report on all the contributions of industry PACs during the 1994 elections. The report notes that the communications industry was the sixth-largest PAC giver, trailing such groups as the finance, insurance, and real-estate sector and the health industry. PACs run by what the center calls the communications-and-electronics sector contributed a total of nine million four hundred thousand dollars to the 1994 congressional elections. Peter Barton, the president of Liberty Media, which is the programming arm of Tele-Communications, Inc., the nation's largest cable company, explained the donations this way: "You buy war bonds on both sides."

But in the 1994 elections, eighty per cent of the contributions from communications PACs were earmarked for incumbents, and since at the time the Democrats controlled both the House and the Senate—as they have for most of the past forty years—they got more than half the money. The largest single contributor was A.T. & T.: it gave candidates $1,295,994, of which fifty-nine per cent went to Democrats. Of the top ten Senate and top ten House recipients of money from communications-company PACs, eleven served on the House Commerce Committee or the Senate Commerce Committee (which oversee the communications industry), and three others were majority or minority leaders. The largest sum of money from communications PACs to go to a single recipient was $190,608, and the recipient was Jack M. Fields, Jr., of Texas, who was then the ranking minority member of the House Commerce Committee's Telecommunications Subcommittee and is now its chairman.

As an industry group, the local telephone companies were the most generous givers (three million one hundred and twenty-seven thousand dollars). The Baby Bells gave slightly more than half their money to Democrats. The cable and satellite industries' PAC gifts (a million twenty-nine thousand dollars) also tilted toward the Democrats. The Hollywood studios and media and entertainment companies contributed a total of two million two hundred and ninety-four thousand dollars, and sixty per cent of it went to Democrats. Entertainment companies such as MCA and the music companies were, like Viacom, lopsidedly Democratic. The publishing and computer industries gave relatively small sums.

The nine million dollars in PAC gifts probably represents less than half the total donations to congressional candidates from the communications industry, since individuals also make campaign contributions. The 1994 figures for individual contributions have not yet been analyzed, but for the 1992 election fifty-four per cent of communications-industry giving—ten million dollars, according to the Center for Responsive Politics—came from individuals in the industry, not from PACs. Nor does the 1994 total include four million dollars of so-called soft money that communications companies gave to the Democrats or nearly three

"I liked it better on top of my husband."

• •

and a half million given to the Republicans. (There is no limit on such soft-money donations.) For the 1992 elections, Time Warner dispensed four hundred thousand dollars in soft money, three-fourths of it to the Democratic Party. MCA gave two hundred and fifty-eight thousand dollars, more than ninety per cent of it to the Democratic Party.

Unsurprisingly, there are also less noticeable ways to curry favor. For instance, gifts to the Progress and Freedom Foundation, the think tank closely tied to Speaker Newt Gingrich—or to Senate Majority Leader Bob Dole's charity for the disabled, the Dole Foundation—won't show up in standard campaign-finance reports. And, of course, money is not the only form that gifts can take. Tele-Communications, Inc., has made some of its channel space available to National Empowerment Television, a politically conservative programming service that has been championed by Gingrich. Liberty Media's Peter Barton says that the service was put on cable because it generated a good audience in various markets where it was tested. There may have been other reasons, too, since John Malone, the chief executive officer of T.C.I., is a libertarian conservative, and since documents on file with the Federal Elections Commission reveal that in the week before the November elections T.C.I. shovelled two hundred thousand dollars—soft money—to the Republican National Committee.

SINCE the elections, a lobbyist says, the local telephone companies have shifted from donating their PAC money more or less evenly to awarding about seventy per cent of it to Republicans. Frank Biondi says that since the 1994 elections Viacom's PAC donations have been "more balanced" than they were before November. This month, Viacom had planned to sponsor a fund-raising breakfast for Larry Pressler, of South Dakota, who is now the chairman of the Senate Commerce Committee. According to one Viacom executive, a friend of Pressler's phoned to request the fund-raiser. The intermediary is reported to have said, "The Senator would like Sumner to do it." The goal, another Viacom executive said, was to raise thirty thousand dollars for Pressler's 1996 reëlection campaign. According to Viacom, Sumner Redstone, a lifelong liberal Democrat, who worked in the Truman Administration and has raised money for the Kennedys and Clinton, had not yet decided whether to lend his name or his liberal reputation to Pressler, a conservative Republican. But this is about business, not personal convictions. "The practical realities of life are that Republicans are in control of congressional committees," Biondi says. "We recognize that. And we'll deal with it." The practical realities are also that Viacom wants to avoid embarrassing publicity, so last week, after inquiries were made by *The New Yorker*, the plans for the fund-raiser were dropped.

Pressler has lately been doing a sort of whistle-stop tour: he has held a series of fund-raisers involving the communications industry, and the stops have included T.C.I., in Denver, a five-hundred-dollar-a-head Motion Picture Association of America fund-raiser in Hollywood, and, in New York, an event sponsored by Time Warner at the "21" Club, one sponsored by Rupert Murdoch's News Corp., and one at the home of the former media mogul John Kluge. Asked through a spokeswoman about the propriety of a committee chairman's shopping for money from industries he regulates, Pressler declined to respond.

An experienced telephone-company lobbyist responded to the same question this way: "These committees have these companies by the balls. It's the cost of doing business. What contributions do is prevent your opponent from getting an advantage. If you don't give, you build up subtle resentments."

In the sense that incumbency gets rewarded, none of this is new. Nevertheless, the magnitude of the shift of money is startling. "If you close your eyes you can hear money pouring into Washington," I was told by the communications attorney Nicholas W. Allard, who used to work on Capitol Hill as chief of staff for Senator Daniel Patrick Moynihan. And figures from the Federal Election Commission reveal that in January, February, and March of this year—the latest period for which the F.E.C. has computerized the filings—PAC giving has swung sharply to Republicans. A.T. & T., which has been fighting to make inroads in providing local phone service, and which gave fifty-nine per cent of its political contributions to Democrats in the last election, reported giving four times as much to Republicans as to Democrats in those months, including five thousand dollars to Thomas J. Bliley, Jr., the chair-

40

man of the House Commerce Committee, and two thousand dollars each to Pressler, Dole, and Dick Armey, the House Majority Leader. Ameritech, the Chicago-based Baby Bell, which like other local phone companies seeks to add long-distance service, gave three and a half times as much to Republicans as to Democrats, including thirty-five hundred dollars to Pressler and three thousand dollars to Jack Fields. The National Association of Broadcasters, which wants a relaxation of radio-ownership rules, and which gave Democrats the edge last year, has given three times as much to Republicans as to Democrats so far this year, including five thousand dollars to Fields, two thousand to Bliley, and four thousand to Armey.

There is also a Presidential dimension to this shift. The guessing in Washington is that when Dole's PAC reports are made public this summer he will emerge as the major beneficiary of the communications industry. Dole's Presidential PAC, Campaign America, received, according to the Center for Responsive Politics, a hundred and sixty-nine thousand dollars from communications PACs and individuals during the 1994 elections—before he became a Presidential candidate. Pressler nominally calls the shots on telecommunications legislation in the Senate, but Dole's voice is more dominant. It is Dole, not Pressler, who will decide when to bring the telecommunications-reform legislation to the Senate floor. And Dole has already softened his long-standing opposition to the long-distance carriers: he now favors legislation requiring the Baby Bells to allow long-distance competitors into their home markets before they may enter the long-distance business themselves. "Communications is the feeding ground that Bob Dole has been looking for," a prominent Clinton Democrat asserts. "Like all animals, Presidential candidates need their own feeding ground."

When Tony Coelho was chairman of the Democratic Congressional Campaign Committee, in the mid-nineteen-eighties, he traded access to Democratic leaders for campaign contributions. Coelho, for example, organized a Speaker's Club: in return for individual donations of five thousand dollars a year or PAC tributes of fifteen thousand dollars, members were listed as "trusted, informal advisers" to the Democratic leaders. In the spirit of the turn-of-the-century Tammany Hall leader George Washington Plunkitt, the Democrats split hairs between "dishonest graft" (unreported cash gifts, which are illegal) and "honest graft" (reported cash gifts, which are legal).

Yet, however sleazy the Democrats have been in years past, the new Republican majority has in some ways been even more crass. "It is a time-honored practice for fund-raisers to hit up the industry affected by the committee assignment of the members," one prominent lobbyist who is a Democrat says. "But now it seems to be noticeably more aggressive in three respects. First, the Republicans who took over the committees moved much more quickly to exploit the leadership positions. In the communications industry, House Republicans, led by Jack Fields, did a clever thing: they invited more than thirty C.E.O.s and other leaders to two days of briefings. There was never any mention of supporting anyone. It was all 'We want to pick your brains.' Much as these C.E.O.s like to think of themselves as savvy, they don't know how politics works in this town. They came out and said, 'This is really terrific. They want to know how I feel about issues.' Then they got the calls from the fund-raisers and the Party chairman. After the meeting, I got three calls from Haley Barbour," the Republican National Chairman. (All lobbyists—regardless of party affiliation—are perceived first as sources of cash.) Then, this Democrat went on to say, came calls to companies and trade associations urging them to get rid of their Democratic lobbyists and hire Republicans. Among the first to switch were the long-distance-telephone companies, which retained the former Republican senators Howard Baker and Paul Laxalt to lead their lobbying effort. "There's a runaway hubris operating here," the lobbyist concluded.

The hubris was visible at the House Commerce Committee briefings, on January 19th and 20th. Held in the Cannon House Office Building, they were closed to the press and to Democrats. At dinner the first night, Gingrich was the featured speaker, and he took the occasion to attack the media as too negative and too biased, and even unethical. After the speech, Time Warner's C.E.O., Gerald Levin, rose and gently rebuked

(41)